

G67LGARS

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

07 CR 274 (WHP)

5 HERBERT VELOZA GARCIA,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 7, 2016

2:35 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 ANDREA SURRATT

Assistant United States Attorney

18 RUBEN OLIVA

Attorney for Defendant

19 ALSO PRESENT: SELMA MARKS, Spanish Interpreter

20 FRANCISCO OLIVERO, Spanish Interpreter

G67LGARS

Sentence

1 (Case called)

2 MS. SURRETT: Good afternoon, your Honor. Andrea
3 Surratt for the government. With me at counsel table with the
4 Court's permission is intern Caroline Zielinski.

5 THE COURT: Good afternoon, Ms. Surratt.

6 MR. OLIVA: Sorry, your Honor. We're having some
7 technical difficulties.

8 THE DEPUTY CLERK: Counsel for the defendant.

9 MR. OLIVA: Good afternoon, your Honor. Ruben Oliva
10 on behalf of defendant Herbert Veloza Garcia, who is present,
11 and prepared to proceed with the aid of the interpreter.

12 THE COURT: Good afternoon to you, Mr. Oliva.

13 I note the presence of a Spanish interpreter. Would
14 you identify yourself for the record.

15 THE INTERPRETER: Selma Marks, M-A-R-K-S.

16 THE COURT: All right. And are you certified?

17 THE INTERPRETER: Yes, I am, your Honor.

18 THE COURT: Very well. Good afternoon.

19 THE INTERPRETER: Good afternoon.

20 THE COURT: Mr. Veloza Garcia, are you able to
21 understand what's being said here this afternoon through the
22 Spanish interpreter?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Good afternoon. This matter is on for
25 sentencing. Are the parties ready to proceed?

G67LGARS

Sentence

1 MS. SURREATT: Yes, your Honor.

2 MR. OLIVA: Yes, your Honor.

3 THE COURT: Mr. Oliva, have you reviewed with your
4 client the presentence investigation report?

5 MR. OLIVA: I have, your Honor, at length.

6 THE COURT: Are there any factual matters set forth in
7 the report that you believe warrant modification or correction?

8 MR. OLIVA: No, your Honor.

9 THE COURT: And the matter that you raised in your
10 submission with respect to the calculation of the guidelines by
11 probation, has that been corrected to your satisfaction?

12 MR. OLIVA: It was. My objection was upheld by
13 probation, but they instead used a different calculation which
14 I have no problem with.

15 THE COURT: Very well.

16 Ms. Surratt, are there any factual matters set forth
17 in the report that the government believes warrant modification
18 or correction?

19 MS. SURREATT: No, your Honor.

20 THE COURT: Does the government have any application
21 here?

22 MS. SURREATT: Your Honor, the government today moves
23 under Section 5K1.1.

24 THE COURT: All right. Mr. Oliva, before I hear from
25 you, I pose a question I guess in the first instance to

G67LGARS

Sentence

1 Ms. Surratt. I've reviewed the government's 5K letter on
2 behalf of the defendant and I ask, quite frankly, why is the
3 Court being asked to sentence the defendant today?

4 MS. SURRATT: Your Honor, I think that the answer is
5 that this defendant has been in custody for a long time and a
6 lot of the defendants against whom his cooperation is still
7 pending are uncertain in terms of their pending arrival to the
8 United States.

9 So as the Court has certainly noticed, there are
10 defendants who are, for instance, pending extradition from
11 Colombia against whom this defendant's cooperation may still be
12 needed; but some of the timing on that is uncertain. And
13 together with Mr. Oliva, the government decided that there was
14 no sense in delaying his sentencing indefinitely since he has
15 been in U.S. custody for -- it's over a hundred months at this
16 point.

17 THE COURT: All right. I just note that you write to
18 me that a principal defendant against whom the defendant is
19 cooperating, Mr. Rendon Herrera, is expected to be extradited
20 from Colombia and to arrive in the U.S. "in the near term."
21 And you then state that Mr. Veloza Garcia is a crucial witness
22 against Rendon Herrera.

23 Why, if Rendon Herrera is about to be extradited to
24 the United States and may go to trial, why would the government
25 come in and say now is the time to sentence the cooperator?

G67LGARS

Sentence

1 MS. SURRATT: Yes, your Honor. I think Mr. Rendon
2 Herrera's arrival in the U.S. has been expected in the near
3 term for quite some time. It is what we have been told from
4 the Colombian government. But as the Court knows, extradition
5 proceedings are by their nature somewhat uncertain. And we
6 think that with the supervised release conditions that we've
7 asked for, which are detailed in page 22 of the 5K, that that
8 takes care of any concerns about continued cooperation. And
9 Mr. Oliva has assured the government that his client is
10 extremely willing to continue his cooperation beyond his
11 sentencing in this case.

12 THE COURT: All right. So am I to assume from the
13 government's presentation of Mr. Veloza Garcia for sentencing
14 at this time that the government thinks that he's been
15 incarcerated long enough?

16 MS. SURRATT: Your Honor, the government obviously is
17 not going to make a sentencing recommendation for this
18 cooperator beyond laying out, as is laid out in detail in the
19 5K, that this is an extraordinary defendant in really all
20 senses of the word -- extraordinary in terms of his very
21 serious criminal conduct, but also extraordinary in terms of
22 his cooperation. In terms of whether or not he's been in jail
23 for long enough, that's obviously for the Court to decide.

24 I will say that whether he receives additional time in
25 jail or whether he is released and is serving a term of

G67LGARS

Sentence

1 supervised release, the government is confident that he will
2 appear to cooperate if he is needed, even if he is serving a
3 sentence in a BOP facility somewhere other than New York. So
4 that's the calculation the government made, your Honor, is that
5 basically no matter what happens here, he can still be a
6 valuable government cooperator.

7 THE COURT: What about the defendant's concern that
8 he's going to be turned over to ICE?

9 MS. SURRETT: Yes, that is going to happen, your
10 Honor. So to the extent the Court sentences the defendant to
11 time served today -- again, the government takes no position on
12 that -- or if he serves another few years in jail, at the end
13 of this prison sentence, he will be remanded into ICE custody.

14 I understand from Mr. Oliva that Mr. Oliva intends to
15 make a Convention against Torture application on behalf of his
16 client. So, ultimately, Mr. Oliva's hope is that his client
17 will be released into the United States and not be sent back to
18 Colombia.

19 THE COURT: All right. Thank you, Ms. Surratt.

20 Mr. Oliva, do you wish to be heard on behalf of your
21 client?

22 MR. OLIVA: Yes, your Honor, I do.

23 Your Honor, I do believe that a sentence of time
24 served is appropriate in this case and let me tell the Court
25 why; and, in part, as I tell you that, I think I will address

G67LGARS

Sentence

1 some of the questions that you have.

2 Let me first start by addressing Daniel Rendon
3 Herrera, alias a/k/a Don Mario. We've been hearing that he's
4 going to be coming here in the short term for the last five
5 years, literally, and that's part of the problem. He is a
6 major guy in Colombia and he, through any number of means, has
7 been able to avoid his extradition. And so I think that's part
8 of the reason why at some point it's just unfair to this
9 defendant, particularly in light of everything else that he's
10 done and in light of the sentences that are being received and
11 have been done and to very, very similarly situated defendants,
12 even in this very same courthouse, and that also addresses the
13 secondary question.

14 The language that we have in our submissions in
15 regards to the conditions of supervised release are the
16 identical language that was also applied to two other
17 defendants that I mentioned to you and the similarly situated
18 defendants. And specifically that would have been Carlos Mario
19 Aguilar, alias Rogelio or a/k/a Rogelio, and Mauricio Lopez,
20 a/k/a Yiyo, both of whom were sentenced in this building and
21 both of them were sentenced to -- one was time served,
22 approximately eight years. The other one was sentenced to also
23 eight years, so he's doing about seven and a half.

24 Both of those defendants are and were members of the
25 AUC, associated with the paramilitary. The only difference

G67LGARS

Sentence

1 with them is that they have much more serious charges than this
2 defendant. They had the murders of a number of government
3 informants, U.S. government informants, which they confessed
4 to, I might add. And, in addition, those defendants, as
5 opposed to this individual, were really involved much more
6 heavily in the purest form of narcotics trafficking and also
7 murder for hire, kidnapping, drug collections, that kind of
8 stuff. So really looking at them, neither of those individuals
9 also were participating in the Justice and Peace process, which
10 I'm going to get to in just a second.

11 Both of those defendants are also witnesses against
12 Mr. Rendon Herrera. And I might add, there are any number of
13 witnesses again Mr. Rendon Herrera. It's not that the entire
14 case relies on Mr. Veloza Garcia, while certainly Mr. Veloza
15 Garcia would be an important witness and perhaps even crucial.
16 But both of those defendants applied for the Convention against
17 Torture -- one of them is a client of mine -- and both of them
18 have been granted. Their families have already received
19 political asylum in large part for cooperation that was in some
20 sense similar to one of the defendants that I alluded to here
21 in the United States as to this defendant.

22 However, this defendant has also, as you may recall
23 from reviewing my submission, testified against a far greater
24 number of political and military and police figures in
25 Colombia.

G67LGARS

Sentence

1 THE COURT: Is that process continuing?

2 MR. OLIVA: Thank you for asking. I was about to go
3 there.

4 In fact, if I may, in court is Fernando Villota, who
5 is the Colombian attorney for my client who represents him in
6 the Justice and Peace process. He just was here with the
7 Colombian prosecutors in the continuation of a process that he
8 has. They've already spoken with the Colombian government, who
9 fully expects that he will remain here, and allow him to
10 continue cooperating and dealing with that process,
11 particularly in light of some recent developments.

12 And that's something I wanted to address, sort of
13 getting back to my presentation, is that it's very important
14 that this Court understands -- and I think it does -- that
15 almost all of the conduct, a lot of the very bad conduct that
16 you saw in both of our submissions, is conduct that is being
17 prosecuted by the Colombian authorities. And Mr. Veloza Garcia
18 is one of the few who has actually participated in a full
19 manner and continues to be a participant in that process and
20 will continue being a participant in that process.

21 He has a 40-year sentence, which is suspended to eight
22 years because of his cooperation and his participation. And
23 cooperation is part of it, but it's not all of it. It's
24 everything. It's patterned somewhat after the Commission for
25 Reconciliation that they had in South Africa. Now that process

G67LGARS

Sentence

1 is now also again being emulated to deal with the guerrillas
2 who are in the process, as you may know from reading the news,
3 they're in Cuba and they're in the final stages of reaching an
4 agreement, which in large part is using the process that
5 allowed these individuals to demobilize as a blueprint, with
6 the very large exception that the Colombian government has
7 assured those guerrilla commanders they will never be
8 extradited to the United States to face narcotics charges,
9 unlike this defendant who, as the Court might recall again,
10 provided the very information that allowed the government to
11 prosecute him and to indict him, actually, in a post-Miranda
12 statement that he made early on.

13 Now, in terms of the Justice and Peace process, that
14 process, despite the fact he's already been sentenced on one of
15 the blocks, there's two other blocks and he continues to
16 participate actively and ably in that process. And that
17 process is going to continue for a while, for a long while, in
18 fact, because it is a very slow moving, unlike our system,
19 which I think because of our great fortune in terms of
20 having -- I was explaining to Ms. Surratt, nothing is
21 digitized. There is no electronic case filing. There is no
22 emails. They don't even mail each other the documents.
23 They're all deposited in a central location and you have to
24 send your law clerk on a weekly basis just to find out what has
25 happened in the case. So because of that, it is a very slow

G67LGARS

Sentence

1 moving process.

2 And it's been one of the criticisms of the process,
3 particularly for this defendant because he has literally
4 testified and appeared in video conferences for thousands of
5 hours -- and I think I attached those exhibits -- something
6 that really would be unheard of. You may have defendants that
7 have appeared before you in an application much like the
8 government has provided in this case and the fact that they may
9 have sat for three or four trial days as a government witness
10 is incredibly notable. This defendant has been in weeks' worth
11 of trial days testifying on behalf of the Colombian government,
12 against many of the individuals that participated in the
13 paramilitary organization and enterprise.

14 And along those lines, I've given you the low end in
15 terms of what some of these other defendants that were
16 similarly situated have received both in this district and in
17 other districts, such as D.C. and Miami. Southern District of
18 New York really took the lead in prosecuting AUC commanders,
19 but certainly they weren't the only district. The District of
20 Columbia has also been very active.

21 And in that regard I wanted to also alert or note to
22 the Court of a similar case, although not really similarly
23 situated. The highest ranking member of the AUC that's ever
24 been sentenced was sentenced a few months ago by the Honorable
25 Reggie Walton in the District of Columbia -- and I provided the

G67LGARS

Sentence

1 name to the court reporter -- his name is Rodrigo Tovar Pupo,
2 a/k/a Jorge 40.

3 In terms of their membership and their participation
4 in the AUC, they are very, very similarly situated. Both of
5 them were commanders. Both of them were the guys that started
6 at the beginning in terms of ideological, in terms of wanting
7 to fight and fighting the Communist guerillas, as opposed to
8 some of these other commanders that came later who really were
9 commanders in name only, had never seen combat, never wanted to
10 see combat. They were really narcotics traffickers that were
11 buying these fronts now from the AUC at the end stages of the
12 organization. So Jorge 40, Mr. Tovar Pupo, and Mr. Veloza
13 Garcia were really guys that went in, in my client's case, as
14 you may recall, he went in as a private and rose through the
15 ranks.

16 Mr. Tovar Pupo, however, that's where the similarity
17 ends. He did not cooperate with the United States government
18 at all. In fact, he fought them tooth and nail. He decried
19 the fact and argued forcefully and consistently that all he did
20 was collect war taxes, which is what he did, as well, and that
21 that was not a crime against the United States. Clearly, I
22 disagree. My client disagrees because he's testified down in
23 Colombia that when they were collecting drug taxes, they were
24 providing security for the narcotics traffickers and, as such,
25 they were contributing or furthering the aims of those

G67LGARS

Sentence

1 enterprises. But Mr. Tovar Pupo did not take that position.
2 He said no, I should only be prosecuted in Colombia.

3 But, curiously enough, he was also kicked out of the
4 Justice and Peace process because the Justice and Peace process
5 requires you to be completely honest and up-front and cooperate
6 and he didn't want to do that either. So he wanted to have his
7 cake and eat it too. And so this is a defendant that was
8 kicked out of that process, which means now he's going to be
9 prosecuted under the regular justice system in Colombia as
10 opposed to this system that they've had.

11 Despite all of that and despite the fact that in every
12 other way criminally, same activity, same conduct, the
13 Honorable Reggie Walton did take into account that he was going
14 to be prosecuted in Colombia for those crimes that had to do
15 with his participation in the AUC and sentenced him to 16 years
16 in jail. So I think that was very illustrative because, again,
17 he was the only other AUC commander that's been sentenced
18 outside of this district. I listed all the other AUC
19 commanders and a few of them, obviously, one was four years,
20 another five years. My client served already nine years day
21 for day.

22 There's only been one other AUC commander that was
23 sentenced in Washington. His name is Salvatore Mancuso. He
24 also was, I understand, kicked out of J and P; and the
25 government did not feel that his assistance was very

G67LGARS

Sentence

1 substantial. He received a 15-year sentence.

2 So I think that's one of the reasons why the
3 government and I felt that we should at least provide him the
4 opportunity. Obviously, this Court is going to make the final
5 call and the final decision. But it seemed to us, anyway, that
6 it was appropriate or it seemed to me, I should say,
7 appropriate that this defendant be sentenced and be sentenced
8 to time served, particularly in light of some of these other
9 defendants who, again, provided much less cooperation, had
10 equal or higher violence, especially as it relates to this
11 country, when you kill a U.S. government or DEA confidential
12 informant, which he didn't do, and for that reason it was
13 appropriate.

14 THE COURT: If I can just interrupt for a second.

15 With respect to the sentence that your client has
16 received in Colombia under the Justice and Peace initiative of,
17 if I'm recalling correctly, 84 months?

18 MR. OLIVA: It's eight years. It's a 40-year sentence
19 suspend down to eight.

20 THE COURT: Eight years -- what will happen with
21 respect to that sentence? If your client's asylum application
22 is granted here, I take it he will not return to Colombia to
23 serve that sentence, or is there some agreement between
24 Colombia and the United States concerning that?

25 MR. OLIVA: There are other defendants who are

G67LGARS

Sentence

1 similarly situated, and in those cases the Colombian government
2 has not and will not ask for their extradition. They're
3 perfectly happy because, in fact, they understand, and I'm
4 going to give you a point right now exactly on that, that them
5 being in Colombia is way more dangerous than being here. Not
6 only that, there is some question and they have not made the
7 final decision. The Justice and Peace process is very new, so
8 they're still constantly tweaking it in conjunction with the
9 United Nations and other organizations and NGOs that are
10 helping them out on this. But there is some suggestion that
11 that would be concurrent with the sentence here because there
12 is some thought over there that the conduct really is
13 intertwined, both the conduct that happened here and the
14 conduct over there. And, certainly, they want to recognize and
15 reward those individuals who have participated, as opposed to
16 those who haven't.

17 They have indicated that those who have been expelled
18 from Justice and Peace, that they are going to seek their
19 extradition. So, for example, the gentleman I just mentioned,
20 there's a very high likelihood that he would in fact be
21 deported and extradited because not only that, he wouldn't even
22 have the opportunity to argue for CAT because he hasn't
23 cooperated against any political or military figure in
24 Colombia.

25 And in that regard, in fact, it's in the submission,

G67LGARS

Sentence

1 there is a gentleman, an AUC commander, who also cooperated
2 much to his level in Colombia and received the eight years, but
3 he was only one block. And he was released by the Colombians
4 despite the fact that he is indicted in this district, and
5 that's Diego Vecino, a/k/a Aleman, the German. He was released
6 in Colombia, much to everybody's surprise, I might add, because
7 he's wanted here. But perhaps he would have been better off
8 being brought here because two months after being released, and
9 he continued -- like he is -- continued cooperating, continued
10 participating in the Justice and Peace program. There have
11 been two murder attempts already on him while he was out. And
12 the third one didn't quite succeed, but left him in a coma from
13 which he has not recovered. I'm talking about in the last
14 three months.

15 So that only, again, highlights, No. 1, the risk of
16 danger that he has he incurred not only in his cooperation
17 against the United States' targets, but as well as the
18 Colombian targets. But also it highlights why the government
19 of Colombia, when they have one of the few that has been really
20 the poster child -- he's been described that -- the poster
21 child for the Justice and Peace process in terms of the upper
22 echelons cooperating in a manner befitting of what it was
23 believed they wanted them to, it would be a devastating blow to
24 them and to the entire process for something to befall him.

25 And speaking with the attorney here from Colombia,

G67LGARS

Sentence

1 Mr. Villota, Dr. Villota, they call him doctor in Colombia, he
2 has indicated to me that the Colombian prosecutors that he
3 works with and deals with in terms of Justice and Peace are
4 quite confident and expect that he would in fact remain here in
5 the United States.

6 So we fully expect that to happen. It has already
7 happened as to two other individuals who, again, didn't even
8 participate in J and P, the two other defendants who I
9 mentioned earlier who were AUC members but really part of this
10 Anvigado office, which was really a murder for hire office that
11 contributed to the AUC. Much like Mr. Veloza Garcia, all the
12 taxes that he would collect, most of those taxes would go to
13 the top leaders of the AUC. What remained he would use to pay
14 salaries to his men who were in battle with the Communist
15 guerrillas.

16 And, again, unlike Mr. Pupo Tovar, who made much about
17 the fact that at the end of the day, I'm fighting with the
18 Colombian armed forces fighting the Communist guerrillas, this
19 is one of the few defendants who, again, in his effort to be
20 completely honest, said that's how it all started, but we were
21 corrupted. By the end we were overrun by dopers. We were
22 really at their employ and what we started doing, we didn't
23 finish doing.

24 And he, because of that, has actually been the target
25 of even more ire than some of the other participants because he

G67LGARS

Sentence

1 has a reputation for being brutally honest and part of that
2 honesty is saying let's not kid ourselves. By the end of the
3 day, we weren't nearly as ideologically pure, any more than our
4 enemy was, which is very true. The Communist guerrillas long
5 ago stopped caring about the peasants and the farmers and
6 distribution and really all they care is growing and producing
7 cocaine to send over here so they can stay in power. God
8 willing, there will be a peace process. And perhaps at this
9 point after 60 years of civil war in Colombia, we'll all get to
10 go to some of the nicer parts of Colombia that right now as
11 Americans we could not possibly go.

12 I'm going to conclude my comments. I think I've
13 provided a very detailed presentation of the scope, the nature,
14 and the importance of the cooperation, and so has the
15 government. And I compliment the government for having put
16 together that 5K submission.

17 As a summary, this is a defendant -- and I've been
18 doing this for 35 years. I've represented over 400 cooperators
19 at all levels. In fact, some of the people that are mentioned
20 in these submissions I represent. And there is no question
21 that the cooperation, substantial assistance that this
22 defendant provided is among the highest. And there's a reason
23 for that. Because of the fact that he's a tax collector,
24 whereas other individuals that may come to this courthouse
25 belong to one organization or the other, they all came to him

G67LGARS

Sentence

1 to pay him taxes, very small taxes out of everything they were
2 doing. But because of that, he was in an unenviable position
3 to really know a lot of these defendants. And because of that,
4 the strategy that SDNY employed to extradite these particular
5 commanders was very smart and clever because the cooperation
6 he's been able to provide is something that really no other
7 narcotics trafficker in a pure sense could ever provide.

8 But, in sum, he's provided at my count cooperation and
9 procured the indictment of one, two, three, four, five, six
10 CPOTs. And in the business when you talk about CPOT, that's
11 even above kingpin. They are simply very few people that are
12 ever designated a CPOT. And consolidated priority
13 organizational targets is the highest designation that OCDETF
14 puts on anybody. This is the kind of label that's all hands on
15 deck. Everybody in the government, every agency from DEA to
16 FBI to ICE to ATF to secret service is going to go after these
17 targets. They're going to go after these targets. These are
18 the worst of the worst. These are the ones we know if we get
19 them and we put them away, it's going to make a dent in the
20 production and distribution and exportation of cocaine.

21 To have a defendant who cooperates against one CPOT is
22 phenomenal. Two or three, you're in the stratosphere. To have
23 a defendant that provided information that procured the
24 indictment of this many CPOTs is unheard of. And I explained
25 to the Court why it's rare, in part. But it is also incredibly

G67LGARS

Sentence

1 dangerous because you just made enemies out of incredibly large
2 organizations that continue. You can cut the head off the
3 snake, but the organization continues. It's vitally important.
4 Obviously, the fact he cooperated against his fellow AUC
5 commanders is important.

6 Finally, he cooperated against the generals in the
7 Colombian Army and the Colombian National Police that
8 cooperated, facilitated, aided and abetted and participated in
9 what he was doing. And with the exception of one of them who
10 was extradited, none of them have been extradited. They are
11 all being prosecuted by the Colombian government, as they
12 should be. They're a sovereign nation and they should clean
13 their own laundry and they're doing that thanks to him. Again,
14 this is really not your run-of-the-mill case and certainly not
15 the run-of-the-mill cooperation.

16 Just as a matter of housekeeping and one final matter,
17 there's a consent forfeiture agreement that you're going to
18 sign today. He doesn't have any property in the United States.
19 But I wanted the Court to know that as part of his cooperation
20 with the Colombian government as part of the Justice and Peace
21 process, he did disgorge himself of everything he had. It
22 wasn't even in his name. They wouldn't have even known. And
23 he provided and this is the Colombian documents. And I already
24 killed enough trees with my sentencing memo. I didn't want to
25 keep killing them. And it's all in Spanish, so it was going to

G67LGARS

Sentence

1 cost me a bundle to translate it.

2 But, quite frankly, I can tell you and I would hope
3 that you would take my word for it, he delivered and gave back
4 to the Colombian government -- and this is not so much his own
5 property. It was the property of the AUC that he controlled,
6 again, just like any other military commander, but it was eight
7 ranches, two vehicles, and then what he owned was ten pieces of
8 jewelry, seven or eight watches and a few of his gold chains,
9 gave it all in, disgorged himself of everything that he owned,
10 and helped the government identify what some of the other
11 commanders owned that he was aware of, which, again, is part of
12 the process. You don't just give up what you have. You got to
13 tell us what you know about the rest of the commanders, which,
14 of course, as a result of that, he is not going to win any
15 popularity contest.

16 And, if fact, that's one of the reasons why some of
17 these other guys have dropped out. They would rather do the
18 time regardless of how long it is than give up their ill-gotten
19 gains. And I know that's nothing new to this Court with other
20 defendants. They're happy to give up people, but they won't
21 ever give up their own stuff. But he certainly did and I did
22 want the Court to be aware of that, that this is not -- despite
23 the fact that the government here had a forfeiture and we
24 agreed to it, obviously, there's nothing here. And under the
25 agreement that we have with Colombia, they're not able to

G67LGARS

Sentence

1 forfeit anything in Colombia and bring it back here. That's
2 one of the conditions for extradition that they have. They
3 keep -- they get to keep all the goods and it makes sense to
4 me.

5 So, your Honor, I'm open to any questions you may
6 have. I did not want to take the time of the Court rehashing
7 everything that I already told you in my sentencing submission,
8 but I did want to just note to the Court his past and continued
9 cooperation in J and P that has been nothing short of
10 remarkable and through that, the cooperation that he's provided
11 that's been very extensive. And, obviously, just note in
12 passing the importance and the amount of cooperation that
13 really drove us to want to come before you and give you the
14 opportunity to decide whether or not enough is enough, and I
15 hope you do, and to then also provide you what some other
16 courts have sentenced similarly situated defendants in terms of
17 level, but certainly not in terms of their cooperation both
18 with the United States and with the government of Colombia.

19 And, finally, just also again, almost in beating a
20 dead horse, but both of our submissions were abundantly clear
21 that in other cases risk of danger is something we talk about,
22 it's speculative. It's theoretical or hypothetical, rather.
23 Not the case here. There have been actual murder attempts on
24 his family. There have been actual murders of individuals that
25 he procured their cooperation, his own men, which when he

G67LGARS

Sentence

1 demobilized, he told them, his last order as commander was you
2 will participate in Justice and Peace, you will tell the truth.
3 And some of those paid, who remained in Colombia, paid for
4 that, obeying that order with their own lives and the lives of
5 their families. We have the wife of one of his men was killed.
6 And those threats continue to exist and as highlighted by one
7 of his old associates being put in a coma a few months ago.

8 And, finally, I just wanted Court to be aware that he
9 has not and is not walking out of this a rich man. Far from
10 it. He's given everything up.

11 And so for all of those reasons, your Honor, I would
12 again respectfully ask that you sentence this defendant to time
13 served, which is in effect a ten-year sentence, and I think
14 that certainly will meet all of the factors not only under
15 5K1.1, but, quite frankly, all of the factors under 3553(e).
16 Nobody looking at this defendant is going to feel that there
17 hasn't been a signal of deterrence. He's going to continue
18 paying the price, and he will continue cooperating with both
19 governments.

20 So I thank you for your patience and your time.

21 THE COURT: All right. Thank you, Mr. Oliva. Your
22 responses to my questions were very informative.

23 Ms. Surratt, does the government wish to be heard
24 further?

25 MS. SURRATT: Very briefly, your Honor.

G67LGARS

Sentence

1 First, as a matter of administrative matters, as
2 Mr. Oliva mentioned, we are going to ask the Court to enter the
3 order of forfeiture that has been prepared and that all the
4 parties will sign. It's in the amount of \$2.5 million and
5 that's on consent.

6 The second administrative matter, this morning I sent
7 over to your Honor's chambers the plea transcript from 2010
8 along with a plea acceptance letter. I believe that the U.S.
9 Attorney's Office did send this over in 2000, but I wasn't here
10 and neither were your clerks and we couldn't figure out if it
11 had been signed. So we passed it up again and I just wanted to
12 make sure the Court had seen it.

13 THE COURT: I have seen it and read it today. Yes.

14 MS. SURRATT: Thank you, your Honor. And my apologies
15 for doing this at the last minute, and thank you to your clerks
16 for noticing this.

17 So, your Honor, I don't have a lot to add beyond what
18 is in the 5K and beyond what Mr. Oliva just said. Like I said
19 earlier, the government's view is this is an extraordinary
20 defendant in all senses of the word. The first half of my 5K
21 submission is spent detailing what can only be described as
22 pretty horrific offense conduct. Like Mr. Oliva said, the
23 defendant was an AUC commander. And while he wasn't, in
24 Mr. Oliva's words, a pure narcotics trafficker, he was
25 intimately involved in the narcotics trade through his role as

G67LGARS

Sentence

1 an AUC commander.

2 In that capacity, he participated in thousands of
3 murders, either by his own hand or by ordering people to do it
4 or by getting people killed in connection with AUC military
5 operations. So there's no question that the offense conduct
6 here was extremely serious, some of the most serious that this
7 Court has probably ever seen.

8 On the other hand, his cooperation was similarly
9 extraordinary. Mr. Oliva mentioned in his submission and I did
10 too in my 5K letter that the defendant began cooperating
11 immediately upon his arrest in Colombia, first meeting with law
12 enforcement authorities and then shortly thereafter with his
13 counsel meeting with the U.S. prosecutors, not me, but an AUSA
14 from ten years ago. It has been the experience with every USA
15 who has met with this defendant and, frankly, every law
16 enforcement officer, every Colombian official, and every member
17 of the U.S. government, that he has been candid and truthful
18 and helpful, really to an extent unseen in many cooperators.
19 The level of immediate truthfulness and candidness was really
20 extraordinary. And I know this from speaking with people who
21 were around at the time. Again, this wasn't me. Like
22 Mr. Oliva outlined, the level of detail and the level of
23 importance of the information that this defendant provided was
24 extraordinary.

25 So when your Honor asked at the outset whether it was

G67LGARS

Sentence

1 the government's position that time served is the appropriate
2 sentence, the government still won't take a position other than
3 to say the government believes this is a hard question. It's a
4 hard sentencing given both of the equities in this case.

5 And beyond that, your Honor, I'm happy to answer any
6 questions. Otherwise, the government rests on its submission.

7 THE COURT: All right. I really don't have any
8 further questions for you. I think that several of the
9 concerns that I have expressed have really been addressed in
10 counsel's remarks. Obviously, this Court has never seen this
11 defendant until today and, therefore, I can only rely on the
12 submissions until I get to the sentencing proceeding.

13 It is a very difficult sentencing. And my initial
14 most serious concern about the imminence of an extradition has
15 really been I think adequately addressed by defense counsel and
16 I'm prepared to proceed with sentencing.

17 But, first, would the defendant like to address the
18 Court?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I'll hear from him now. The defendant can
21 stand and just be close to the interpreter.

22 THE DEFENDANT: Your Honor, I would respectfully want
23 to express to you that I am completely sorry for having
24 participated in a war that was not something that I came up
25 with, but that I participated in. But as a result of the

G67LGARS

Sentence

1 circumstances that exist in my country and that existed with me
2 led me to be involved in it. I was convinced that I was
3 fighting for my country, that I was fighting Communist
4 guerrillas, Communists that wanted to take over my country.
5 But, unfortunately, during that fight, we became involved with
6 a segment of the chain, of the drug trafficking chain. In
7 order to finance the war against the Communist guerrillas, the
8 FARC, that is why in 2004 I became -- it became clear to me
9 that that was not the fight that was proper. That is why
10 starting in 2004, I realized that that was not the proper fight
11 for my country.

12 I surrendered to the Colombian government and
13 immediately the U.S. government got in touch with me. I
14 started to cooperate in order to fight against drug
15 trafficking. That is the real fuel that is added to the war.
16 That is why I have made the commitment, first of all, with
17 myself to be committed a hundred percent with American and
18 Colombian justice. As a result of the sacrifices that my
19 family has had to endure, the danger that I have put them in,
20 and they have had to participate in witness protection programs
21 because during this process, I have had to reveal the
22 participation of the Colombian government, of businessmen, of
23 politicians, and many of the generals were part of the highest
24 ranking members of law enforcement in my country.

25 But I am not sorry for having helped law enforcement,

G67LGARS

Sentence

1 and if I have to continue helping law enforcement, I will
2 continue to do so for the sake of my country, Colombia.
3 Because drug trafficking only leads our countries down the path
4 of poverty and violence. I am truly regretful of having
5 participated in those violent activities, and I am committed to
6 never again participating in any activity that is violent
7 against other human beings or anyone who is around me.

8 I ask my family's forgiveness for the sacrifices that
9 they have had to endure for what I did, and I promise that I
10 will never let them down again. I will not let them down nor
11 will I let down law enforcement.

12 Thank you very much, your Honor.

13 THE COURT: The defendant, Herbert Veloza Garcia,
14 comes before this Court having pled guilty to two very serious
15 crimes against the United States, conspiracy to import cocaine
16 and the distribution of cocaine.

17 This Court has reviewed the presentence investigation
18 report. I adopt the findings of fact in that report as my own
19 and will cause the report to be docketed and filed under seal
20 as part of the record in this case.

21 Mr. Veloza Garcia is responsible for trafficking more
22 than 450 kilograms of cocaine, a very significant amount of
23 cocaine which the guidelines recognize with a base offense
24 level of 43. Because the defendant was a leader of the AUC and
25 commanded numerous individuals and an organizer of the criminal

G67LGARS

Sentence

1 activity here that involved five or more participants and was
2 extensive, a four-level role adjustment is appropriate.

3 Now, the defendant accepted responsibility for his
4 criminal conduct in a plea before Magistrate Judge Cott. I
5 have reviewed the minutes of that proceeding. I find that the
6 defendant's plea was knowing and voluntary and that he's
7 accepted responsibility and, accordingly, I grant him a
8 three-level reduction in the guidelines.

9 And so his total offense level is 43. This is his
10 first criminal conviction in the United States. Under the
11 guidelines, that yields a guideline range of life in prison on
12 each count.

13 Now, the government moves here for a downward
14 departure. This Court has reviewed the government's
15 submission, understanding it somewhat better now after the
16 sentencing proceeding has moved to this point. I grant the
17 government's application for a downward departure for
18 substantial assistance.

19 And so the question for this Court is what sentence is
20 the appropriate sentence for this defendant.

21 As recounted in the extensive submissions both by the
22 government and defense counsel, the defendant became involved
23 with the AUC, a military organization in Colombia. Over time,
24 whatever ideological principles the AUC thought it was fighting
25 for were certainly corrupted by narcotics traffickers, and the

G67LGARS

Sentence

1 AUC and this defendant became willing accomplices in the global
2 supply chain of cocaine from Colombia. The events recited in
3 both submissions of the defendant's conduct in Colombia are
4 appalling. The defendant acknowledges being responsible for
5 the deaths of thousands of people and various scenes are
6 recounted as vignettes in the submissions. The violence was
7 wanton and unchecked.

8 In the search to root out FARC guerrillas or others
9 who would undermine AUC and its tax collection efforts and its
10 drug trade, the defendant and others under his control would do
11 such things as go to a village disco at night intent on killing
12 two or three people who they believed were guerrillas working
13 against them and perhaps not even finding those people in the
14 disco but nevertheless opening fire and killing 20 or more
15 innocent people who were just out for a night at a disco.

16 The defendant must have truly been a terror to meet at
17 that time. And God help anyone who the defendant thought was a
18 threat to him or his organization.

19 Now, at the same time, this Court acknowledges that
20 the defendant ultimately surrendered to Colombian authorities
21 and has become an extremely valuable asset not only to the
22 government of Colombia, but to the United States. He's placed
23 his family and all of his relatives in very grave danger. As a
24 consequence of his acts, he's been separated from his family
25 for a very long time during his term of incarceration here.

G67LGARS

Sentence

1 The government speaks in profound terms about his
2 cooperation in interrupting Colombian drug trafficking. And
3 the defendant appears to this Court to express genuine remorse
4 for his many year reign of terror. These were acts of war
5 against a civilian population completely unchecked.

6 This Court is mindful that the Colombian government
7 finds the defendant to be essentially its poster child for the
8 Justice and Peace program, that he will continue to work in
9 that regard, that it's likely that any sentence imposed now by
10 Colombia will be deemed to be served concurrently with any
11 sentence imposed by this Court.

12 And so in trying to fashion a sentence, I'm trying to
13 take into consideration the gravity of the crimes here, the
14 duration, the defendant's role in them, and at the same time
15 his efforts to do something that no human being can do, turn
16 back the clock of time. He can't do that. But he can endeavor
17 to atone by cooperating fully with government authorities.

18 And so it's against that backdrop, Mr. Veloza Garcia,
19 that I'm prepared to impose sentence on you and I'd ask, sir,
20 that you stand.

21 Mr. Veloza Garcia, someone today or perhaps both
22 attorneys said this is not a run-of-the-mill case and it
23 certainly is not a run-of-the-mill case. In my 18 years on the
24 bench, I can't say that I've had a case that approaches this
25 case as I read through all of the submissions, both by your

G67LGARS

Sentence

1 counsel and, quite frankly, the longest 5K letter I think I've
2 ever received. But I have to balance the severity of your
3 crimes with the work that you've done and continue to do for
4 the government.

5 And so it's against that backdrop that it's my
6 judgment that you be sentenced to a term of 132 months of
7 imprisonment, to be followed by a term of supervised release
8 subject to all of the standard conditions of supervised release
9 that I'm going to review with you in a moment and that the
10 government proposed in their letters, specifically that you
11 cooperate fully with the United States Attorney's Office for
12 the Southern District of New York, the Drug Enforcement
13 Administration, and any other law enforcement agency designated
14 by the United States Attorney's Office, that you attend all
15 meetings at which the United States Attorney's Office requests
16 your presence, that you truthfully and completely disclose all
17 information with respect to your activities concerning all
18 matters about which the United States Attorney's Office
19 inquires, and that you provide the United States Attorney's
20 Office upon request any document, record, or other tangible
21 evidence relating to matters about which the United States
22 Attorney's Office or any designated law enforcement agency
23 inquires of you, and that you truthfully testify before the
24 grand jury or at any trial or other court proceeding with
25 respect to any matters about which United States Attorney's

G67LGARS

Sentence

1 Office may request your presence.

2 The term of supervised release is going to be seven
3 years of supervised release. And I'm going to impose, of
4 course, all of the standard conditions of supervised release as
5 I do with every defendant and that will include periodic and
6 random drug testing.

7 I am not going to impose any fine on you because
8 you're agreeing to an order of forfeiture here today and any
9 fine would be an exercise in futility.

10 I am imposing a mandatory \$200 special assessment.

11 And I will sign the order of forfeiture.

12 Now, this, Mr. Veloza Garcia, constitutes the sentence
13 of this Court. I advise you that to the extent you have not
14 previously waived your right to appeal, you have the right to
15 appeal. I advise you further that if you cannot afford
16 counsel, counsel will be provided to you free of cost.
17 Mr. Oliva has done a remarkable and outstanding job for you in
18 his sentencing submission to the Court and his remarks here
19 today, and I am confident that he will advise you further with
20 respect to your appeal rights.

21 You may be seated.

22 Are there any further applications?

23 MS. SURRATT: One moment, please, your Honor.

24 Not from the government, your Honor. Thank you.

25 THE COURT: Anything further, counsel?

G67LGARS

Sentence

1 MS. SURRATT: Your Honor, the government does move to
2 dismiss the underlying indictment since the defendant pled
3 guilty to the S1 indictment.

4 THE COURT: The government's application is granted.

5 MR. OLIVA: Your Honor, the reason I'm conferring with
6 counsel is because although he's not going to -- I expect based
7 on what I know of his sentence, it's probably going to be
8 another eight months before he gets released, give or take.
9 But he's still participating in the Justice and Peace process
10 and the Bureau of Prisons doesn't always understand that
11 because I've had that happen with other paramilitary defendants
12 that are involved in Justice and Peace, which is the process
13 that really is accounting for much of what the Court has
14 indicated today, as well, and I would just add that.

15 But for that reason, I would suggest either that in
16 your judgment and commitment order you include a
17 recommendation -- Bureau of Prisons, you know, will do what
18 they will do, but a recommendation from the Court in light of
19 the necessary participation in Justice and Peace that he be
20 designated either in -- I think the best institution right now
21 where they have video conference facilities and where they've
22 designated the other ones would be Miami FDC. The Federal
23 Detention Center in Miami is I think the one place where
24 they're doing that.

25 THE COURT: Just to be clear, what's the precise name

G67LGARS

Sentence

1 of the institution?

2 MR. OLIVA: Thank you, your Honor. Miami Federal
3 Detention Center.

4 THE COURT: Okay.

5 MR. OLIVA: Miami FDC.

6 THE COURT: I will grant that and include it as a
7 recommendation.

8 MR. OLIVA: Thank you very much.

9 The other matter is, and this has also been done in
10 the other AUC cases and I think the government probably even
11 alluded to it in their submission, it's important that it's
12 also noted in the judgment and commitment order that he should
13 get credit for the time served from the moment that the
14 indictment was served upon him.

15 MS. SURRATT: Yes. The government certainly doesn't
16 object to the defendant getting credit for the time he spent in
17 Colombia.

18 THE COURT: I will indicate that as well.

19 MS. SURRATT: I actually spoke to the Bureau of
20 Prisons about this very issue this week, your Honor, in
21 anticipation of this sentencing and many others that I have.
22 It's my understanding that it certainly helps to have your
23 Honor note that and I'll confer with Mr. Oliva about that. But
24 I think BOP will want some sort of proof from us, from the
25 parties, about the amount of time he spent in Colombia; and

G67LGARS

Sentence

1 Mr. Oliva and I will certainly take care of that.

2 THE COURT: I would ask that you make in the next day
3 or so a short letter submission to me containing the precise
4 language that you would like me to use in the judgment of
5 conviction that would also contain the date from the time of
6 his incarceration in Colombia.

7 MS. SURRATT: We will certainly do that, your Honor.
8 We will also make sure the BOP gets the documentation that they
9 need to support that language.

10 MR. OLIVA: Perfect. Thank you, your Honor.

11 THE COURT: Anything further?

12 MR. OLIVA: No, your Honor. We thank the Court for
13 the Court's time.

14 THE COURT: All right. Mr. Veloza Garcia, I will only
15 say to you, sir, in conclusion of this proceeding, that it is
16 only because of your extraordinary cooperation that
17 notwithstanding all of the horrendous things that you've done
18 in the course of your life that you are going to get the chance
19 soon to hit the restart button. And I trust that your attorney
20 will proceed promptly with the appropriate application to the
21 United States government with respect to your status.

22 And I trust, sir, that I will not see you again for
23 any violation of supervised release because you've been given
24 an enormous break here in this case.

25 Do you understand, sir?

G67LGARS

Sentence

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Good luck.

3 o0o

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25